BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. CHINO VALLEY UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2014010791 ORDER GRANTING IN PART AND DENYING IN PART MOTION TO DISMISS

PROCEDURAL BACKGROUND

Student filed the instant request for due process hearing (complaint) on January 22, 2014. Student's complaint raises three issues: 1) Whether the Chino Valley Unified School District (District) has complied with the procedural requirements of state and federal law when it failed to identify Student's unique individual educational needs and when it failed to address her continued lack of educational progress in her educational placement; 2) Whether the District has failed to offer Student an appropriate placement, such as a residential treatment center; and 3) Whether the actions of the District, in denying Student a free appropriate public education, have resulted in a denial of her rights under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) (Section 504), the Americans with Disabilities Act (ADA), and California law.

On February 4, 2014, the District filed a motion to dismiss Student's complaint, along with a supporting declaration and exhibits. The District raises three grounds for dismissal. First, that the Office of Administrative Hearings (OAH) has no jurisdiction to decide Student's allegations brought under Section 504, the ADA, or California statute other than the Education Code. Second, that Student is barred by the doctrine of collateral estoppel and/or res judicata from bringing this complaint because she previously withdrew the issues with prejudice in a prior OAH proceeding. Lastly, the District contends that Student, who is a non-conserved adult over the age of 18, has revoked her consent for special education eligibility and withdrawn from attendance at the District. The District therefore contends that it has no obligation to provide special education and related services to her.

Student has not filed any response to the District's motion. On February 10, 2014, Student did file a motion to amend her complaint, which is presently pending. However, even assuming the motion to amend is granted, Student's proposed amended complaint does not resolve the issues raised in the District's motion to dismiss.

OAH Jurisdiction over Section 504 and ADA Claims

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to entertain claims based on Section 504, the ADA, or any other federal statute other than the IDEA. Nor does OAH have jurisdiction to entertain claims brought under California statues addressing alleged violations of civil rights. Student recognizes this in her complaint. She states that she has brought the allegations in issue three of her complaint solely for purposes of exhausting administrative remedies.

The District's motion to dismiss issue three of Student's complaint is therefore granted with regard to the allegations brought under the ADA and Section 504, and granted as to the allegations brought under California law to the extent that the issue purports to address statutes other than special education law, Education Code, section 56000, et seq.

Collateral Estoppel and/or Res Judicata

On May 22, 2013, Student filed a previous due process case against the District in OAH case number 2013050898. Prior to the hearing in that matter, Student withdrew five of her six issues, without prejudice. The issue that remained for hearing was: Whether the District denied Student a free appropriate public education, within the statute of limitations, by failing to provide placement in a residential treatment center.

The hearing in case 2013050898 began on October 4, 2013. On October 8, 2013, prior to the end of the hearing, Student moved to withdraw the sole remaining issue of her complaint, with prejudice, through the date the complaint was filed, May 22, 2013. The District, through counsel, did not oppose Student's request. OAH granted the motion in an Order dated October 9, 2013.

Federal and state courts have traditionally adhered to the related doctrines of res judicata and collateral estoppel. (*Allen v. McCurry* (1980) 449 U.S. 90, 94 [101 S.Ct. 411, 66 L.Ed.2d 308]; *Levy v. Cohen* (1977) 19 Cal.3d 165, 171 [collateral estoppel requires that

the issue presented for adjudication be the same one that was decided in the prior action, that there be a final judgment on the merits in the prior action, and that the party against whom the plea is asserted was a party to the prior action]; see 7 Witkin, California Procedure (4th Ed.), Judgment § 280 et seq.) Under the doctrine of res judicata, a final judgment on the merits of an action precludes the parties or their agents from relitigating issues that were or could have been raised in that action. (*Allen, supra*, 449 U.S. at p. 94.) Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case. (*Ibid*.; *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341; see also *Migra v. Warren City School Dist. Bd. of Ed.* (1984) 465 U.S. 75, 77, n. 1 [104 S.Ct. 892, 79 L.Ed.2d 56] [federal courts use the term "issue preclusion" to describe the doctrine of collateral estoppel].)

The doctrines of res judicata and collateral estoppel serve many purposes, including relieving parties of the cost and vexation of multiple lawsuits, conserving judicial resources, and, by preventing inconsistent decisions, encouraging reliance on adjudication. (*Allen, supra*, 449 U.S. at p. 94; see *University of Tennessee v. Elliott* (1986) 478 U.S. 788, 798 [106 S.Ct. 3220, 92 L.Ed.2d 635.) While collateral estoppel and res judicata are judicial doctrines, they are also applied to determinations made in administrative settings. (See *Pacific Lumber Co. v. State Resources Control Board* (2006) 37 Cal.4th 921, 944, citing *People v. Sims* (1982) 32 Cal.3d 468, 479; *Hollywood Circle, Inc. v. Department of Alcoholic Beverage Control* (1961) 55 Cal.2d 728, 732.)

However, the IDEA contains a section that modifies the general analysis with regard to res judicata and collateral estoppel. The IDEA specifically states that nothing in the Act shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed. (20 U.S.C. § 1415(o); 34 C.F.R. § 300.513(c) (2006); Ed Code, § 56509.) Therefore, although parties are precluded from relitigating issues already heard in previous due process proceedings, parents are not precluded from filing a new due process complaint on issues that could have been raised and heard in the first case, but were not.

In this case, Student's issue two is the identical issue which Student raised, but then withdrew with prejudice, in case 2013050898. However, Student's withdrawal with prejudice only addressed the time period up to the date she filed her complaint on May 22, 2013. Any time period subsequent to that date is not precluded from litigation. Therefore, the District's motion to dismiss issue two of the instant case is granted, but only as to any time period prior to May 23, 2013. Student may proceed to hearing as to the time period as of that date.

Additionally, Student only withdrew with prejudice the single issue that was proceeding to hearing in case 2013050898. That is the only issue within the applicable two year statute of limitations that is barred from re-litigation. Student's issue one is therefore not precluded, to the extent that it does not allege Student's need for a residential placement prior to May 22, 2013.

Student's Withdrawal from Special Education and from the District

The District asserts that even if the instant complaint is not barred by res judicata or collateral estoppel, Student has revoked her placement as a student eligible for special education and has withdrawn from attendance in the District. The District has attached two exhibits to its declaration in support of its motion to dismiss. District Exhibit B is a hand-written note stating that Student wishes to drop out of special education and out of the District. Exhibit C is an acknowledgement with Student's signature that she has been informed that her request to withdraw from special education signifies that she no longer has a right to receive special education and related services from the District. The District therefore asserts that Student no longer is one of its students, has no right to special education, and therefore cannot bring this action against it.

The District's position is unpersuasive for two reasons. First, the District's exhibits are extrinsic evidence not part of Student's complaint. Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc…..), special education law does not provide for a summary judgment procedure. Here, the District's motion to dismiss is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits, based upon evidence that raises questions of fact. Accordingly, the motion is denied on that basis.

Secondly, the District's motion fails to acknowledge that even if Student was no longer entitled to special education and related services after October 10, 2013, when she signed her notice of withdrawal from special education and the District, she still was eligible prior to that date. In an appropriate case an ALJ may grant relief that extends past graduation, age 22, or other loss of eligibility for special education and related services as long as the order remedies injuries the student suffered while she was eligible. (*Maine School Admin. Dist. No. 35 v. Mr. and Mrs. R.* (1st Cir. 2003) 321 F.3d 9, 17-18 [graduation]; *San Dieguito Union High School Dist. v. Guray-Jacobs* (S.D.Cal. 2005, No. 04cvl330) 44 IDELR 189, 105 LRP 56315 [same]; see also *Barnett v. Memphis City Schools* (6th Cir. 2004) 113 Fed.App. 124, p. 2 [nonpub. opn][relief appropriate beyond age 22].)

Even if Student has revoked her eligibility and withdrawn from the District, she is entitled to raise issues in a due process complaint that concern the period prior to her revocation. The District's motion to dismiss is denied to the extent it asserts Student's withdrawal from special education and as a student in the District precludes the instant due process request.

ORDER

1. The District's motion to dismiss is GRANTED as to any allegation that Student required placement in a residential treatment center prior to May 23, 2013, in order to receive a FAPE, or that the District was legally required to provide such a placement.

2. The District's motion to dismiss is DENIED as to all other contentions.

3. All dates shall remain on calendar as presently scheduled.

DATE: February 12, 2014

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings